

**To:** Don Waye/DC/USEPA/US@EPA[]  
**From:** TROX Randall <TROX.Randall@deq.state.or.us>  
**Sent:** Wed 10/10/2012 9:08:19 PM  
**Subject:** RE: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)  
[mime.htm](#)  
[http://coastalmanagement.noaa.gov/nonpoint/pro\\_approve.html](http://coastalmanagement.noaa.gov/nonpoint/pro_approve.html)  
[http://coastalmanagement.noaa.gov/nonpoint/docs/6217de\\_fnl.pdf](http://coastalmanagement.noaa.gov/nonpoint/docs/6217de_fnl.pdf)  
[http://coastalmanagement.noaa.gov/nonpoint/docs/6217nc\\_fnl.pdf](http://coastalmanagement.noaa.gov/nonpoint/docs/6217nc_fnl.pdf)  
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[image001.gif](#)

Don,

Thank you, this is very helpful and exactly what I needed.

One question maybe you can't answer, but I need to ask. I notice that Maine has met the conditions with a voluntary time of sale inspection program. The condition in their approval was that if less than 80% of the properties sold were not inspected they would need to seek a rule change making it mandatory. The approval was in 2003 and I wonder if they were successful in meeting the 80% target. I can see that drawing attention as an option we didn't present and why didn't we pursue that. Granted Maine tried to

get a mandatory inspection program off the ground and they failed, so this was perhaps an interim measure.

Thanks again.

Regards,

Randy

From: Don Waye [mailto:Waye.Don@epamail.epa.gov]

Sent: Wednesday, October 10, 2012 11:22 AM

To: TROX Randall

Subject: RE: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)

Hey Randy,

Nice to talk with you today. My info on DE & NC is pretty dated. You can see all of our state approval rationales for every CZARA management measure here:

[http://coastalmanagement.noaa.gov/nonpoint/pro\\_approve.html](http://coastalmanagement.noaa.gov/nonpoint/pro_approve.html)

Delaware's OSDS rationale (from 2002) is on pp. 7 & 8 here:

[http://coastalmanagement.noaa.gov/nonpoint/docs/6217de\\_fnl.pdf](http://coastalmanagement.noaa.gov/nonpoint/docs/6217de_fnl.pdf)

NC's (from 2003) is here on pp. 13-20:

[http://coastalmanagement.noaa.gov/nonpoint/docs/6217nc\\_fnl.pdf](http://coastalmanagement.noaa.gov/nonpoint/docs/6217nc_fnl.pdf)

Finally, here's what we have in our pending (not yet final) approval document (so far?) for Washington State's coastal nonpoint program, once we clear/resolve the tribal issues that have been raised:

#### **B. NEW AND OPERATING ONSITE DISPOSAL SYSTEMS (OSDS)**

**CONDITION:** Within two years, Washington will include in its program management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area for a program that ensures inspection of OSDS at a frequency adequate to ascertain system failure and provides for denitrification where nitrogen-limited surface waters may be adversely affected by excess nitrogen loadings from new OSDS.

**DECISION:** Washington has satisfied this condition.

**RATIONALE:** Washington meets the OSDS inspection requirement for existing systems through a combination of statewide rules, local ordinances, and a targeted approach focusing on sensitive waters in the Puget Sound area and other select areas outside the sound.

In 2005, Washington passed rules to comprehensively regulate OSDS (WAC 246-272A). Chapter 246-272A-270 requires owners of OSDS to:

- "assure a complete evaluation of the system components and/or property to determine functionality, maintenance needs and compliance with regulations and any permits" once every three years for all systems consisting solely of a septic tank and gravity and at least annually for all other systems;
- "Employ an approved pumper to remove the septage from the tank when the level of solids and scum indicates that removal is necessary"; and
- "Provide maintenance and needed repairs to promptly return the system to a proper operating condition".

State guidance notes that inspections should be conducted by a qualified sewage system inspector or homeowner that has demonstrated knowledge by receiving a certification or passing a test. Twelve of the 17 counties that are either fully or partially within the 6217 management area have adopted local ordinances that require a qualified inspector either for all routine inspections, at the time of property transfer, or for routine inspections within targeted areas of special concern such as shellfishing or drinking water supply areas. Additionally, the Revised Code of Washington (RCW) 64.06.020 requires that at the time of property transfer, an owner provide a buyer with a statement that discloses when the system was last inspected and pumped out and any problems that may exist with the system.

In addition to the statewide OSDS rules, under RCW 70.118A, the 12 counties bordering Puget Sound must also develop an enhanced local OSDS program to provide even greater protection in designated marine recovery areas—areas where existing OSDS may be causing a problem, such as impaired shellfish growing areas, 303d listed marine waters for low dissolved oxygen and fecal coliform, or marine waters where nitrogen has been identified as a contaminate of concern. As part of the marine recovery program, these 12 counties must develop and implement onsite waste management plans that the Washington Department of Health (DOH) reviews and approves. Counties must also inventory existing OSDS, identify where systems are located in designated marine recovery areas, ensure systems are inspected and repaired as needed, and develop an electronic database to share information with the public about OSDS.

The 12 Puget Sound counties are required to report the progress they have made in implementing their onsite waste management plans to DOH, including how many systems are being inspected and tracked, and that have been identified as failing. Counties must also report how they have worked with owners to make repairs. As the 2009 report, *Puget Sound Local On-Site Sewage Management Plans – A Report to the Legislature*, documents, the state has made significant progress in improving OSDS inspections and tracking through the marine recovery area program. For example, in Kitsap County, OSDS inspections increased 80 percent between 2004 and 2008 after it implemented its operation and maintenance program to ensure systems are function correctly.

Outside of the Puget Sound area, Pacific and Grays Harbor Counties require a qualified inspector to inspect every system within areas of special concern such as shellfishing areas and drinking water supplies, at least every three years and report the results of the inspection to the Health Officer. Cowlitz County, which is partially in the 6217 management area, requires proof that the system was inspected by a certified professional within 18-36 months of property transfer depending on the type of system.

Washington's Onsite Sewage System rules (WAC 246-272A) also satisfy the condition to provide for denitrification where nitrogen-limited surface waters may be adversely affected by excess nitrogen loadings from new OSDS. As noted above, the twelve Puget Sound counties, which comprise the majority of the 6217 management area and population, must identify areas in their local health management plans where OSDS could pose an increased public health or environmental risk, including areas where nitrogen has been identified as a contaminate of concern (WAC 246-272A-0015 and RCW 70.118A). Pursuant to WAC 246-272A-0230 (2)(e)(i)(D), where nitrogen has been identified as a contaminant of concern in the local health management plan, nitrogen contributions must be addressed in the OSDS design through lot size and/or treatment.

Washington further requires nitrogen reducing technologies to achieve a 20 mg/L total nitrogen threshold under WAC 246-272A-0110. DOH must review and register these technologies before local governments can permit their use. This performance standard is on par or stronger than the (g) guidance's requirement to achieve a fifty percent reduction of nitrogen from denitrifying OSDS.

Washington also provides low interest loans from its Clean Water State Revolving Fund (more than \$11 million from 2000 to 2010). At least eleven counties use these funds to provide financial assistance, such as low interest loans, to upgrade septic systems, including Clallam, Jefferson, Kitsap, Lewis, Pierce, Thurston, and Pacific Counties. In pollution problem areas, such as Hood Canal which has nitrogen-sensitive waters, Washington's primary strategy has been to use grant funds to pay for centralized wastewater treatment plants or sewer hook ups to get rid of OSDS entirely.

In addition to these regulatory approaches to ensure denitrifying OSDS are considered where appropriate, Ecology is undertaking a comprehensive study of South Puget Sound to determine how nitrogen from a variety of sources, including OSDS, affects dissolved oxygen levels. Ecology and local governments will use results from the South Puget Sound Dissolved Oxygen Study, due to be completed in 2012, to identify areas where OSDS should be upgraded to remove nitrogen. Ecology also plans to expand the study to the entire sound. NOAA and EPA applaud Washington's efforts to continue to investigate where OSDS may be contributing to nitrogen impairments and encourage the State to finalize the study and expand it to other priority coastal areas.

Ecology and DOH are also partnering on a study to evaluate two innovative public domain nitrogen reducing OSDS technologies

that have been shown to reliably remove more than 80% of total nitrogen from wastewater sources in other areas of the country. Most denitrifying systems are proprietary and are very costly for homeowners to install. Therefore, if these public domain systems perform well, Washington will approve their use statewide, providing a more economical alternative to property owners, which will lead to greater acceptance of, and higher compliance with, the requirement to use denitrifying systems in nitrogen sensitive waters where OSDS may be a contributing factor.

Through its State OSDS rules and county ordinances requiring regular preventative OSDS inspections and protection of critical groundwater recharge areas, the State's approach to improving OSDS management in targeted marine waters along Puget Sound, its ongoing studies to facilitate the use of high performance denitrifying systems, and the low interest loan programs and help property owners upgrade systems, Washington has demonstrated it has programs and enforceable policies and mechanisms in place to ensure inspection of OSDS at a frequency adequate to ascertain system failure and provides for denitrification where nitrogen-limited surface waters may be adversely affected by excess nitrogen loadings from new OSDS.

Good luck!

Don Waye  
U.S. Environmental Protection Agency  
Nonpoint Source Control Branch (OWOW/AWPD)

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TROX Randall ---09/19/2012 01:58:40 PM---Thanks for looking into this, Don. A few years ago in that dead week between Christmas and New Year'

From: TROX Randall <TROX.Randall@deq.state.or.us>  
To: Don Waye/DC/USEPA/US@EPA  
Cc: Jayne Carlin/R10/USEPA/US@EPA, Allison Castellan <allison.castellan@noaa.gov>, Robert Goo/DC/USEPA/US@EPA  
Date: 09/19/2012 01:58 PM  
Subject: RE: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)

Thanks for looking into this, Don.

A few years ago in that dead week between Christmas and New Year's I put together a list of states that require time of transfer septic inspections and states that have money to loan or grant to upgrade septic systems. Maybe it could ring some bells on either states (or parts of states) that point to time of transfer septic inspections as satisfying the rule. Or maybe it won't.

Randy

From: Don Waye [mailto:Waye.Don@epamail.epa.gov]  
Sent: Wednesday, September 19, 2012 9:58 AM  
To: TROX Randall  
Cc: Jayne Carlin; Allison Castellan; Robert Goo  
Subject: Re: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)

Randy,

Just a quick follow-up note from yesterday's loose end on MD's point-of-sale "program". There is no state law or regulation compelling these inspections, however, it has become common practice in Maryland for the mortgage lender to require them as a condition for a home loan. My colleague, Robert Goo, just spoke with Jay Prager, who heads Maryland Dept. of Environment's

decentralized wastewater treatment program and reports the following:

"MDE has no requirement for POS inspections. However, if the mortgage company requires an inspection the inspector has to take a MDE course to get certified to conduct the inspections. Jay also said that pretty much all of the sales in MD require inspections because the mortgage companies demand them. MDE sets the code of practice for the inspections and after that it is a civil matter decided by the plaintiffs if there is a dispute."

I found the details of Massachusetts' property transfer onsite inspection program interesting. If the system has been inspected within 2 years of the home sale, then no new inspection is required. If there is bad weather during the time the property is being transferred, then the law allows the inspection to occur within 6 months of the home sale. I do not know how they enforce this or who pays for any repairs uncovered by an inspection that occurred after the sale. Perhaps there's an escrow account?

Don Waye  
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Don Waye---09/18/2012 04:58:49 PM---Randy, Touching base with Allison, I have learned there are limits on New Hampshire's point-of-sale

From: Don Waye/DC/USEPA/US  
To: TROX Randall <TROX.Randall@deq.state.or.us>  
Cc: Jayne Carlin/R10/USEPA/US@EPA, Allison Castellan <allison.castellan@noaa.gov>  
Date: 09/18/2012 04:58 PM  
Subject: Re: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)

Randy,

Touching base with Allison, I have learned there are limits on New Hampshire's point-of-sale inspection requirement -- it is just for waterfront properties within 200 feet of tidal waters. Here's the link:

<http://www.gencourt.state.nh.us/rsa/html/l/485-a/485-a-mrg.htm>

Scroll down to section 485-A:39 Waterfront Property Sale; Site Assessment Study.

It sounds like you are already familiar with what Massachusetts has, but here's a couple of links to more information on that program:

<http://www.mass.gov/dep/water/wastewater/buysell.htm>

<http://www.mass.gov/dep/water/wastewater/inspects.htm>

Our information on the Maryland program is sketchy right now. I did find information on a 1998 law stipulating that point-of-sale inspections must be by trained inspectors and must go beyond visual inspections. As far as I can tell from the official record, Maryland did not rely on point-of-sale inspection requirements for approval of this condition under CZARA.

Also, a few counties within state coastal nonpoint management areas have point-of-sale inspection requirements for onsite systems, but I do not know how much of a factor CZARA was in these requirements.

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Allison Castellan ---09/18/2012 01:47:51 PM---Randy-- According to my records, MA, NH and MD relied on pt. of sale inspections to

From: Allison Castellan <allison.castellan@noaa.gov>

To: Don Waye/DC/USEPA/US@EPA

Cc: Jayne Carlin/R10/USEPA/US@EPA, TROX Randall <TROX.Randall@deq.state.or.us>

Date: 09/18/2012 01:47 PM

Subject: Re: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)

Randy--

According to my records, MA, NH and MD relied on pt. of sale inspections to meet CZARA requirements. However, I'm not sure if these were developed specifically for CZARA or were already on the books that the states pointed to when developing their CZARA programs. Other states had voluntary programs (like ME) or had requirements for more frequent inspections (3-5 years).

Hope this is helpful.

Allison

On Tue, Sep 18, 2012 at 12:49 PM, Don Waye <Waye.Don@epamail.epa.gov> wrote:

Jayne & Randy,

I think Oregon may be the first one; perhaps Allison can verify. I know Iowa has one, but obviously not as a result of CZARA.

Other states have expressed an interest in this approach.

Don Waye

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Jayne Carlin---09/18/2012 12:44:44 PM---Hi Don and Allison, See Randy's request below. Are either of you able to answer his question? If s

From: Jayne Carlin/R10/USEPA/US

To: allison.castellan@noaa.gov, Don Waye/DC/USEPA/US@EPA

Cc: TROX Randall <TROX.Randall@deq.state.or.us>

Date: 09/18/2012 12:44 PM

Subject: ANSWER needed on What Other States Have Time of Transfer Program (as a result of CZARA federal requirement)

Hi Don and Allison,

See Randy's request below. Are either of you able to answer his question? If so, please go ahead and send your responses directly to him with a cc to me.

Thanks!

Jayne

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----- Forwarded by Jayne Carlin/R10/USEPA/US on 09/18/2012 09:41 AM -----

From: TROX Randall <TROX.Randall@deq.state.or.us>  
To: Jayne Carlin/R10/USEPA/US@EPA,  
Date: 09/17/2012 05:16 PM  
Subject: Time of transfer Question

Hello Jayne,

We are getting some interest in our time of transfer septic inspection rulemaking. Last Friday, we were invited to testify on the rulemaking to the House Committee on Energy, Environment & Water (the link is an audio file that has the Onsite topic starting approximately at 1:24:00 and is about 45 minutes long). One of the questions were asked that we need to answer is what other states have a Time of transfer program as a result of CZARA federal requirement. Maine has a voluntary inspection program that 'provides assurance to the federal government that the state of Maine has adequate administrative controls relative to subsurface systems'. Since this is a CZARA requirement that existing septic system inspection programs are required to be in place, our legislators want to know what other states have this in due to federal requirements (hopefully not being too redundant). Massachusetts has a Title 5 inspection program that came on in the 90's when I still lived there.

I'm hoping someone in EPA has ready access in their brain to this information request and you maybe know who that someone is. It's worth a shot.

Randy Trox  
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[attachment "National Review of Financial Assistance and Time of Transfer Dec 2009.doc" deleted by Don Waye/DC/USEPA/US]